Mr. Rajah, in my view, is placing an extensive meaning to the term "Commercial House". Not all business carried on for the purpose of profit is a "Commercial House". A "Commercial House" is a business occupied with or engaged in commerce. The word "commerce" is a term of a specific meaning. There cannot be commerce except where commodities are bought and sold and to answer to the description of "Commercial House" the business must be conducted by buying and selling of commodities. Bus, theatre and film companies, and "bakery houses" are not "Commercial Houses" and the employees of the bus, theatre and film companies enumerated in paragraph 7 of the affidavit of Phua Siong Bee are not eligible to be members of the Union.

As regards "bakery houses" I take them to mean the bakers' establishments where bread is made. I am of the view that the employees of such an establishment are eligible for membership of the Union as they come within the meaning of "Factory Employees".

Order accordingly.

HAJI HUSSEIN & ORS. v. THE GOVERNMENT OF THE STATE OF KEDAH & PUTEH BIN HAJI MAN

[F.C. (Thomson L.P., Wylie C.J. (Borneo) & Tan Ah Tah F.J.) March 11, 1964]

[Penang — Federal Court Civil Appeal No. 2 of 1964]

Land—Arrears of quit rent etc.—Auction of land.

FEDERAL COURT.

Lim Kean Chye and *Mohamed Zahir bin Ismail* for the appellants.

Hamzah bin Dato Abu Samah (Legal Adviser, Kedah) for the 1st respondent.

M. Abraham for the 2nd respondent.

An appeal against the judgment of Suffian J. in the case of *Haji Hussein & Ors.* v. *The Government of the State of Kedah & Anor.* reported *supra* at p. 28, came before the Federal Court at Penang on March 11, 1964.

After some discussion relating to the points that the land revenue involved was not owed by the plaintiffs but by the personal representative of the deceased landowner in whom by reason of section 48 of the Kedah Land Code the land was vested and that no attempt had been made to serve notices in any way upon the representative, although at the material date the land was vested in the Chief Justice by reason of section 39 of the Probate and Administration Ordinance, 1959, counsel asked for an adjournment. Shortly afterwards counsel for the State of Kedah stated in Court that all parties were agreed that the appeal should be allowed; that the sale of the land should be annulled; that the money paid at the auction should be refunded by the State of Kedah to the second defendant to the original proceedings; and that there should be no order as to costs.

Solicitors: *Jayadewa, Zahir & Izmi; M. Abraham.*

Appeal allowed.

NG HENG TECK v. LEE KWEK CHUAN

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) March 19, 1964]

[Singapore — Federal Court Civil Appeal No. 92 of 1963]

Negligence—Damages for personal injuries—Duty of care—Contributory negligence—Quantum of damages.

Damages—Personal injury—Leg—Fracture of femur, tibia and fibula—Shortening of leg—Knee—Stiffness and limited flexion—Ankle and foot—Limited movement—Permanent disabilities—Pain and suffering.

Precedent—Damages—Malayan and Singapore cases.

The plaintiff, a 61 year old Chinese herbist shop proprietor, was injured by the defendant's motor cycle while he was crossing a road. The defendant was riding his motor cycle approximately on the crown of the road. There was no traffic about and on seeing the plaintiff the defendant slowed down sounded his horn but continued straight on and collided with the plaintiff. The plaintiff sued for damages. At the trial liability was denied and it was pleaded that the plaintiff was guilty of contributory negligence. The learned trial Judge held that the plaintiff was not guilty of contributory negligence and he awarded damages including an assessment of general damages at $15,000 to the plaintiff. On appeal against the assessment of general damages,

Held: there was no ground for interfering with the finding of the trial Judge as to the assessment of damages and the appeal must be dismissed.

So far as quantum of damages is concerned Malayan cases are quotable in Singapore as authority for awards for similar injuries and also Singapore cases are quotable in Malaya and are accepted there.

Cases referred to:—

(1) *Mamat* v. *Abdul Manaf* [1963] M.L.J. 345.

(2) *Abdul Majid* v. *Pahang Lin Siong Motor Co. Ltd. & Anor.* [1963] M.L.J. 346.

(3) *Tessensohn* v. *Tan Yew Chye* digested [1964] M.L.J. XLV.

(4) *Goh Joo Hin* v. *Lim Thor Bah* digested [1964] M.L.J. XLV.

In addition the following cases were also cited in argument:

Low Ah Tow v. *Yusof Bin Kayab* [1954] M.L.J. 112; *Loughran* v. *Armstrong* [1956] M.L.J. 137; *Abdul Samad* v. *Gammon & Christiani-Neilsen* [1962] M.L.J. 394; *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29; *Aziz Bin Shariff* v. *Easy Bus Co. & Anor.* [1958] M.L.J. 261.

In the Court below the following judgment was delivered:

Buttrose J. (delivering oral judgment): In this case I am quite satisfied that the plaintiff

has established his case of negligence against the defendant.

The position briefly was that on the night in question the defendant was riding his motor cycle along New Bridge Road at half past eight. In front of him he saw two pedestrians crossing the road slightly ahead of him — one some 2 or 3 paces ahead of the other. He was driving approximately on the crown of the road or slightly to the right. There was no traffic about and he had the whole of the width of the road to manoeuvre his motor cycle and what did he do? He said he saw the first man stop on the crown of the road or about the crown of the road and he slowed down and blew his horn and continued straight on. The next thing, according to his own story was that he saw this first man about to step forward and he did apparently take a step and then the collision occurred. It seems to me that seeing this obviously dangerous situation developing ahead of him with two pedestrians some 3 yards apart crossing straight across his path it was his duty to have taken far more care than he did. He allowed the situation to develop and cup it much too fine. He was not, in my judgment, driving with that care and caution which the circumstances of the case required and the occasion demanded. It seems to me that that was the sole cause of this accident. At one stage during the trial I was a little worried as to whether there might be some contributory negligence on the part of the plaintiff but I am now quite satisfied that none has been established. I have come to the conclusion that the sole cause of the accident was the negligent driving of the defendant. It only remains for me to assess the damages to which the plaintiff is entitled.

He has obviously, according to the medical evidence, received substantial injuries and some of them are of a permanent nature. He must have suffered considerable pain and suffering and Professor Gunn's report which I don't propose to deal with for the purposes of this oral judgment, sets out very clearly and concisely the permanent disabilities from which he is suffering. Taking all the various factors and contingencies into consideration I think a reasonable sum to award in the circumstances of this case is $15,000. Special damages have been agreed at $2,757.50. There must therefore be judgment for the plaintiff for $17,757.50 and costs.

From this judgment the defendant appealed to the Federal Court.

FEDERAL COURT.

Michael Maxwell for the appellant (defendant): The respondent was 61 years of age at the time of the accident and he had sustained a fracture of the shaft of the right femur and a fracture of the lower end of the right tibia and fibula. On March 22, 1962 a metal pin was passed through the upper part of his tibia. Treatment of the femur did not produce the satisfactory union hoped for and on June 1, 1962 an open operation was performed to fix the fracture of the femur internally and to bone graft it. On September 18 the plaster was removed from the tibia. There was a 1¾ inches shortening of the right leg and it was weaker than the left leg and the appellant walked with a limp. There was a stiffness of the knee but no pain. Knee flexion was limited to 90° instead of 180° to normal range. There was some limitation of movement in the ankle joint and the joints of the foot. There was a considerable limitation of internal rotation. The X'rays dated February 18, 1963 show the ankle joint has been slightly tilted and that the fracture of the femur is now soundly united by bone and a metal rod and metal band remain in situ. The limitation of the ankle and foot movement was 30% of normal and hip joint 20° internal rotation.

Some of the local cases would have to be disregarded as being either too high or too low. In attempting to get a line of uniformity one has to choose the mean. *Mamat* v. *Abdul Manaf* [1] and *Abdul Majid* v. *Pahang Lin Siong Motor Co. Ltd.* [2]. The present was a case in which bearing in mind the age of the respondent and the fact that no actual loss of future earnings was involved the amount awarded was far too high.

Denis Murphy for the respondent (plaintiff): The learned Judge in the Court below had had no help from the appellant and the only case cited was cited by the respondent namely *Tessensohn* v. *Tan Yew Chye* [3] in which for a more serious injury and award of $17,500 was made. Fortunately there was a case almost identically in part in which an award was made of $13,000 for a similar but slightly less serious injury in a man of 55 by Mr. Justice Tan Ah Tah one of the judges of this Court. That was in the case of *Goh Joon Hin* v. *Lim Thor Bah.* [4] Mr. Maxwell had referred practically entirely to judgments given in cases which were decided in the Federation, and if their Lordships were disposed to dismiss the appeal, he would ask their Lordships to say that they were not dismissing it because they disagreed with anything that had been said as to damages in the judgments quoted before them but because accepting those assessments they were of the opinion that the amount awarded in this case was not so high that it ought to be interferred with by them.

Murphy continuing: I have always thought that injuries which occur in Malaya attract the same award of damages as injuries which are received in Singapore and that in Malaya it is possible to cite authorities, which are Singapore authorities, to persuade the Court in Malaya to award the same amount of damages for similar injuries in Malaya. I think this is what all the Courts do but in fact nothing has been authoritatively said by the former Courts of Appeal to indicate that that is the case and your Lordships would be helping practitioners here a very great deal if you were to tell us that in this Court's opinion damages awarded here are awarded in the same amount as damages in Malaya for similar injuries.

Barakbah C.J. (Malaya) (delivering oral judgment): This is an appeal against the quantum of damages. The learned trial Judge assessed damages including general damages amounting to $17,757.50 with costs.

In my opinion the last case quoted by the learned counsel for the respondent is almost identical with the present case but although the complainant in that case was 55 years old and the amount of general damages there was $13,000 in the present case there were two severe fractures. The age of the complainant here was 61 years and there was no doubt according to the medical report the complainant suffered sub-

stantial injuries and they were of a permanent nature and he had suffered a considerable amount of pain and suffering. The learned trial Judge has found fit to award $15,000. For myself I do not feel disposed to interfere with that award and in the circumstances the appeal should be dismissed with costs.

Wee Chong Jin C.J. (Singapore): I agree that this appeal be dismissed with costs. The matter is really in the hands of the trial Judge and the amount of damages assessed is such that I do not consider it to be so wholly an over-estimate as would entitle an appellate Court to interfere.

Tan Ah Tah F.J.: I agree.

[*Murphy* again referred to the question of authorities in Malaya and in Singapore on damages being interchangeable.]

Wee Chong Jin C.J. (Singapore): So far as I am concerned I have always treated cases from Malaya as quotable here as authority and I have always accepted them.

Barakbah C.J. (Malaya): I agree we have cases in Malaya where Singapore cases are quoted as to quantum of damages and I accept them there.

Tan Ah Tah F.J.: I concur.

Appeal dismissed.

Solicitors: *P. T. Wong & Co.; Murphy & Dunbar.*

RE B. SURINDER SINGH KANDA

[O.C.J. (Hepworth J.) March 17, 1964]

[Penang — Petition for Admission No. 37 of 1963]

Advocate and Solicitor—Admission—Petition for—Objection thereto based on matters arising in previous litigation—Advocates and Solicitors Ordinance, 1947.

The petitioner, a Barrister-at-Law, sought admission as an advocate and solicitor of the High Court in Malaya. The Attorney-General, the Bar Council of Malaya and the Penang Bar Committee objected and opposed the admission. The objections were based on matters arising in a suit the petitioner brought against the Government of the Federation of Malaya for a declaration that his dismissal for the police force was void. The objectors urged the Court to take into consideration for the purposes of the petition the observations contained in the judgments in that suit as a result of the findings of a Police Board of Inquiry.

Held: the finding of the Privy Council was not based solely on a technicality. It went to the root of the merits. Accordingly as it was not justified for the proper dismissing authority to dismiss the petitioner from the police force because they had not properly proved their case, it could not be said that nevertheless on the same grounds for the same reasons the Court was justified in dismissing the petition for admission.

PETITION.

David Marshall and *Jag-Jit Singh* for the petitioner.

Wan Suleiman bin Pawan Teh (Senior Federal Counsel) for the Attorney-General.

Eusoffe Abdoolcader for the Bar Council of Malaya.

C. O. Lim and *S. Thillaimuthu* for the Penang Bar Committee.

Hepworth J.: This is a petition for admission by Mr. B. Surinder Singh Kanda as an advocate and solicitor of the High Court in Malaya, and is moved by Mr. David Marshall and Mr. Jag-Jit Singh on behalf of the petitioner. Inche Wan Suleiman bin Pawan Teh, Senior Federal Counsel, on behalf of the Attorney-General, Mr. Eusoffe Abdoolcader on behalf of the Bar Council, and Mr. C. O. Lim and Mr. S. Thillaimuthu on behalf of the Penang Bar Committee, are objecting and opposing the admission.

The objections are wholly based on matters arising in what has been referred to as the *Kanda* case (*B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya*) and which appear in the judgment of Rigby J. in the High Court, Penang,[1] in the judgments of the Court of Appeal,[2] and in the judgment of the Privy Council.[3]

The facts from which opposition arises and his Lordship's conclusions are set out in the judgment of Rigby J. as follows:—

"The plaintiff joined the Federation of Malaya Police Force on the 1st day of March, 1951, as a Probationary Asian Inspector. On the 31st day of August, 1951, by a Certificate of Appointment, he was appointed a Superior Police Officer in the rank of Probationary Inspector. On the 1st day of June, 1953, he was confirmed in the substantive rank of Police Inspector and placed on the pensionable establishment. On the 7th day of July, 1958, for reasons to which I will later have to refer, the then Commissioner of Police ordered his dismissal from the Police Force.

. . . . . .

In September, 1957, two persons were tried before me in the Supreme Court, Penang, on charges involving possession of forged lottery tickets, contrary to section 474 of the Penal Code. The 1st accused was charged with the substantive offence, and the 2nd accused with abetting the commission of that offence. The case for the prosecution rested substantially upon the testimony of two Police informers of a thoroughly dubious character, one of whom was a rogue and confidence trickster with a number of previous convictions, and both of whom undoubtedly committed perjury in the proceedings before the Court.

The allegation was that the 1st accused had given forged lottery tickets to one of the informers and offered to supply more if he could find a suitable purchaser. The matter was reported to the Police and a trap was arranged, with a Police Detective Sergeant posing as the willing purchaser. Both the Police informers conducted the 1st accused to a hotel. In a room at the hotel the 1st accused was introduced to the intending purchaser. Forged lottery tickets were produced and the trap duly

1. [1960] M.L.J. 115.
2. [1961] M.L.J. 121.
3. [1962] M.L.J. 169.